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11 UNITED STATES DISTRICT COURT  
12 WESTERN DISTRICT OF WASHINGTON AT SEATTLE  
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15 PROVIDENCE HEALTH AND SERVICES;  
16 and SWEDISH HEALTH SERVICES,

17  
18 Plaintiffs,  
19

20 v.  
21

22 CERTAIN UNDERWRITERS AT LLOYD'S  
23 LONDON, SYNDICATE 2623/623  
24 (BEAZLEY); and FEDERAL INSURANCE  
25 COMPANY,  
26

27 Defendants.  
28  
29

NO. C18-495 RSM

STIPULATED DISCOVERY PROTOCOL  
AND ORDER

30 Plaintiffs Providence Health and Services and Swedish Health Services (collectively  
31 “Providence”) and Defendants Certain Underwriters at Lloyd’s London, Syndicate 2623/623  
32 (Beazley) and Federal Insurance Company (collectively “Insurers”) submit this Stipulated  
33  
34 Discovery Protocol, to supplement the parties Joint Status Report and Discovery Plan.  
35  
36

37  
38 **A. General Principles:**  
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40 1. An attorney’s zealous representation of a client is not compromised by conducting  
41 discovery in a cooperative manner. All parties agree to consult with each other in good faith on  
42 any discovery issue to achieve resolution prior to raising any issue with the Court.  
43  
44  
45

1           2.       The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) should be  
2  
3 applied in each case when formulating a discovery plan. To further the application of the  
4  
5 proportionality standard in discovery, requests for production of ESI and related responses  
6  
7 should be reasonably targeted, clear, and as specific as practicable.  
8

9           3.       Any party asserting undue hardship and/or unreasonable expense to any request  
10  
11 for production shall promptly meet and confer regarding the review and production of the  
12  
13 requested data/documents.  
14

15 **B.     Standard for Disclosures:**  
16

17       Each party shall disclose:  
18

19           1.       Custodians. The custodians most likely to have discoverable ESI data and hard  
20  
21 copy documents in their possession, custody, or control. The custodians shall be identified by  
22  
23 name, title, connection to the instant litigation, and the type of the information under his/her  
24  
25 control.  
26

27           2.       Non-custodial data sources. A list of non-custodial data sources (e.g. shared  
28  
29 drives, servers, etc.), if any, likely to contain discoverable ESI.  
30

31           3.       Third-Party Data Sources. A list of third-party data sources, if any, likely to  
32  
33 contain discoverable ESI (e.g., third-party email and/or mobile device providers, “cloud”  
34  
35 storage, etc.) and for each such source, indicate the extent to which a party is (or is not) able to  
36  
37 preserve information stored in the third-party data source.  
38

39           4.       Inaccessible Data. A list of data sources, if any, likely to contain discoverable  
40  
41 ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically identify  
42  
43 the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P.  
44

45 26(b)(2)(B). Note: Section C(2)(a)-(i) below sets forth data sources and ESI which are not

1 required to be preserved by the parties. Those data sources and ESI do not need to be included  
2  
3 on this list.  
4

5 **C. Standard for Preservation:**  
6

7 A party has a common law obligation to take reasonable and proportional steps to  
8  
9 preserve discoverable information in the party's possession, custody, or control. With respect to  
10  
11 ESI, the following provisions apply:  
12

13 1. Absent a showing of good cause by the requesting party, the parties shall not be  
14  
15 required to modify, on a going-forward basis, the procedures used by them in the ordinary  
16  
17 course of business to back up and archive data; provided, however, that the parties shall preserve  
18  
19 all discoverable ESI in their possession, custody, or control. All parties shall supplement their  
20  
21 disclosures in accordance with Rule 26(e) with discoverable ESI responsive to a particular  
22  
23 discovery request or mandatory disclosure where that data is created after a disclosure or  
24  
25 response is made (unless excluded under (C)(2) or (D)(1)-(2) below).  
26

27 2. Absent a showing of good cause by the requesting party, the following  
28  
29 categories of ESI need not be preserved:  
30

- 31 a. Deleted, slack, fragmented, or other data only accessible by forensics.  
32  
33 b. Random access memory (RAM), temporary files, or other ephemeral data  
34  
35 that are difficult to preserve without disabling the operating system.  
36  
37 c. On-line access data such as temporary internet files, history, cache,  
38  
39 cookies, and the like.  
40  
41 d. Data in metadata fields that are frequently updated automatically, such as  
42  
43 last-opened dates (see also Section (E)(5)).  
44  
45 e. Server, system or network logs.

1 f. Data remaining from systems or devices no longer in use that is  
2  
3 unintelligible on the systems in use.  
4

5  
6 g. Electronic data (e.g., email, calendars, contact data, notes, and text  
7  
8 messages) sent to or from mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices),  
9  
10 other than such collected by the Parties or their counsel, for the purpose of preservation or other  
11  
12 potential use in connection with this litigation, prior to the date this Protocol is executed.  
13

14 3. The parties are to confer on any other categories of ESI that may not need to be  
15  
16 preserved, in light of the General Principles set forth above, and determine whether the parties  
17  
18 can agree that such categories can be added to the non-preservation list in (C)(2) above.  
19

20 **D. Standard for Addressing Privilege:**  
21

22 The parties are to confer on the nature and scope of privilege logs for the case, including  
23  
24 whether categories of information may be excluded from any logging requirements and whether  
25  
26 alternatives to document-by-document logs can be exchanged.  
27

28 1. With respect to privileged or attorney work product information generated after  
29  
30 the filing of the complaint, parties are not required to include any such information in privilege  
31  
32 logs.  
33

34 2. Activities undertaken in compliance with the duty to preserve information are  
35  
36 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).  
37

38 3. Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502.  
39  
40 Until a non-waiver order is entered, information that contains privileged matter or attorney work  
41  
42 product shall be immediately returned to the producing party, and its production shall not  
43  
44 constitute a waiver of such protection, (i) if such information appears on its face that it may have  
45

1 been inadvertently produced or (ii) if the producing party provides notice within 15 days of  
2  
3 discovery by the producing party of the inadvertent production.  
4

5 **E. Other Discovery Protocols:**  
6

7 1. On-site inspection of electronic media. Such an inspection shall not be  
8  
9 permitted absent a demonstration by the requesting party of specific need and good cause or by  
10 agreement of the parties.  
11

12 2. Search methodology. The Court presumes that in the majority of cases,  
13  
14 the use of search terms will be reasonably necessary to locate ESI likely to contain  
15 discoverable information.  
16

17 a. A producing party shall disclose what search terms, if any, were used to  
18  
19 locate ESI likely to contain discoverable information. If search terms were not used, a party  
20  
21 shall disclose the search methodology used to locate ESI likely to contain discoverable  
22  
23 information.  
24

25 b. If search terms were used to locate ESI likely to contain discoverable  
26  
27 information, a requesting party is entitled to request no more than ten additional terms or  
28  
29 queries to be used in connection with further electronic searches absent a showing of good  
30  
31 cause or agreement of the parties. The producing party shall run such requested terms across  
32  
33 all ESI sources (custodial or non-custodial) for which the producing party used search terms to  
34  
35 locate potentially-discoverable information, as disclosed pursuant to paragraph 2.a. above. The  
36  
37 parties shall confer in good faith on the ten additional terms or queries. Focused terms and  
38  
39 queries, rather than overbroad ones (*e.g.*, product and company names), shall be employed.  
40

41 c. For the purposes of this Protocol, and absent a showing of good cause,  
42  
43 search terms returning more than one (1) gigabyte of data are presumed to be overbroad.  
44  
45

1           3.     Format. See Exhibit 1 for electronic images (of hard copy and ESI) and document  
2  
3 metadata production specifications. The parties shall meet and confer if it is determined that  
4  
5 the specifications governing the production are unfairly burdensome.  
6

7           4.     Native files. Unless otherwise agreed to by the parties, files that should be  
8  
9 produced in native format are PowerPoint files and files not easily converted to image  
10  
11 format, such as Excel, Access files, and drawing files.  
12

13           5.     Metadata fields. The parties shall confer and agree on whether any metadata  
14  
15 beyond that listed in Exhibit 1 to this Protocol is to be produced or potentially responsive non-  
16  
17 standard filetype metadata (like EXIF metadata) is excluded from discovery.  
18

19           6.     Costs. Generally, the costs of discovery shall be borne by each party. The  
20  
21 Court will, however, apportion the costs of discovery among the parties, including discovery of  
22  
23 ESI that is not reasonably accessible, upon a showing of unequal burdens, the parties not  
24  
25 similarly situated, unreasonable requests, or other good cause.  
26

27           7.     Hard Copy Documents. A producing party shall digitize hardcopy records at the  
28  
29 producing parties' expense unless such a production would result in undue hardship or  
30  
31 unreasonable expense. Generally, hard copy unitization information required shall not exceed  
32  
33 that listed in Exhibit 1 or otherwise stated in this Protocol. Each document's electronic image  
34  
35 shall convey the same information as the original native document. Documents that present  
36  
37 imaging or formatting problems shall be made available. Each page of a document shall be  
38  
39 scanned into an image and if a document is more than one page, the unitization of the document  
40  
41 and any attachments shall be maintained as it existed in the original when creating the image file.  
42  
43  
44  
45

1 DATED this 22<sup>nd</sup> day of July, 2019.

2  
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**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED this 25<sup>th</sup> day of July 2019.



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE